

OGC HAS REVIEWED.

CONFIDENTIAL

21 July 1950

MEMORANDUM FOR: CHIEF, SPECIAL SUPPORT STAFF

SUBJECT: Dual Compensation — Retired Foreign Service Officers as Consultants

REFERENCE: Memo to ASPC from Acting Executive, dtd 16 June 1950; Subj: [REDACTED] Appointment of

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1. The application of the dual compensation laws to retired foreign service officers is shrouded in confusion. The Comptroller General has issued rulings or determinations which are themselves, we believe, contradictory and the Comptroller General has further indicated that he differs with and, under some circumstances, will not be bound by the U. S. Court of Claims.

2. There are various statutes involved or which are of possible application, but the one of most concern under the rulings is 5 U.S.C., § 53. This prohibits anyone receiving two salaries from the Government when the combined remuneration would be in excess of \$2,000.00. The key case on this Section is *Brunswick v. the United States*, 90 Court of Claims 285, 8 January 1940. Brunswick was retired from the foreign service and thereafter took three temporary positions in other branches of the government. The Comptroller General thereupon withhold his retirement pay under the authority of Section 53. Brunswick sued in the Court of Claims which supported his contention that the retirement pay under the foreign service annuity system was not salary within the meaning of Section 53 and that consequently there was no prohibition on receiving the retirement pay while holding the other positions. The Comptroller General, while honoring the payments to Brunswick, has not accepted this case as a precedent for permitting payments in succeeding cases. Thus so far as the Comptroller is concerned, Section 53 prohibits payment of salary by the Government to a foreign service officer drawing retired pay. However, we have been informed that in a recent case, where on the death of a retired foreign service officer it was discovered that he had been receiving remuneration from other government sources, the Claims Division of the General Accounting Office did not see fit to require collection back from his estate.

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3. So far the discussion has been based on a second salary to one individual. In Mr. [REDACTED] case, the proposal is a fee for intermittent advisory consultation with no supervisory or administrative control being exercised by the Agency over the individual. There is no ruling under Section 58 on this specific point, but it would seem arguable that such a fee is not salary within the contemplation of Section 58. A definitive answer on this point would require a ruling by the Comptroller General which would involve a considerable period of time during which the Agency could not avail itself of [REDACTED] services.

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4. A practical alternative might be for Mr. [REDACTED] to ask the foreign service administration for a determination as to whether they would feel it necessary to suspend his retirement annuity on those days on which he received a fee from CIA. The officers of the foreign service with whom we have discussed this matter are Mr. Day of the Foreign Service Finance Division, Annuity Desk, extension 3907, and Mr. Eyerly of the Foreign Service Legal Desk.

LAWRENCE R. HOUSTON
General Counsel
Legal Staff

Attach: Memo fr Acting Exec
to ADPC, dtd 16 June 50,
Appointment of Mr. [REDACTED]

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cc: Subject-Dual Compensation
Chrono
Legal Decisions